## V. LEGISLATION

### A. Bills Enacted into Law

1. California, A-2980, Sept. 8, 1982:

   Requires the Department of Personnel Administration to mandate that each state department either adopt the existing policy of the state personnel board on smoking, or adopt their own policy on smoking which addresses specified items.

2. San Diego, California, Ordinance 15865, Dec. 6, 1982:

   Revises current smoking restriction ordinance (number 11459) to prohibit smoking in "public places and places of employment," except in designated areas. Also requires restaurants seating more than 20 persons to have no-smoking sections.

3. Atlanta, Georgia, June 14, 1982:

   Restricts smoking in city owned and operated buildings.

4. Montgomery County, Maryland, Nov. 15, 1982:

   Extends coverage of existing law to restrict smoking in retail stores, health care and in certain county facilities.

5. Hawaii County, Hawaii, August 24, 1982:

   Amends Article 2 of the Hawaii County Code to prohibit smoking in certain areas owned and operated by the county of Hawaii, including meeting or conference rooms, elevators, auditoriums or sport arenas that are enclosed, community centers, workplaces and on mass transportation buses.

6. Rochester, New Hampshire, March 2, 1982:

   Implements the state law banning smoking in all "enclosed public places."

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V. LEGISLATION

B. Regulatory Action

1. Kansas, "Project Vote," Oct. 20, 1982:

A cooperative effort of the state and local health departments, Project Vote is a program designed to encourage employee plebiscites on whether individual workplaces will be nonsmoking areas.

C. Pending Legislation

1. New Jersey, S-675, A-293:

Would control smoking in places of employment.

2. Columbia, Missouri:

The Columbia Board of Health has prepared six different proposals to restrict smoking in

1. In city owned buildings except where "no-smoking" signs are posted,
2. In city owned buildings except where "smoking permitted" signs are posted,
3. In certain public places where a proprietor has posted "no-smoking" signs, including restaurants,
4. In certain public places except where proprietor has posted "smoking permitted" signs,
5. In workplaces where "no-smoking" signs are posted,
6. In workplaces except where "smoking permitted" signs are posted.

Study Commission report tentatively scheduled to be submitted to City Council on Feb. 15, 1983.

3. Los Alamos County, New Mexico:

County Council voted down (Nov. 22, 1982) a proposal that would ban smoking in county buildings, elevators, public transportation (except cabs), theatres, hospitals, retail stores and museums and would require restaurants to establish no-smoking sections. However, the Council voted to place the proposal on a public referendum, scheduled for a Jan. 11, 1983 vote.



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V. LEGISLATION

4. Monona, Wisconsin:

Proposed ordinance would ban smoking in restaurants, taxis, buses, businesses and during government meetings. Tabled until January 1983.

D. Defeated Legislation

1. New York, S-2400, A-2746, May 18, 1982:

Would have restricted smoking in certain public places, and workplaces and at public meetings. Bars, places of work or any public place with less than 1000 sq. ft. of area may have been designated as a smoking area in its entirety.

E. Bills-Died with Adjournment

1. Hawaii, H-776, April 28, 1982:

Would have amended existing law which restricts smoking in certain areas to cover all places "owned or operated" by the state.

2. Maryland, SB-200, April 12, 1982:

Would have restricted smoking in certain indoor areas, including places of work, food stores, auditoriums, arenas, public meetings and educational facilities.

3. Michigan, SB-486, Dec. 29, 1982:

Proposed enactment of the Michigan Clean Indoor Air Act. Would have restricted smoking in indoor areas used by the public or serving as a place of work including restaurants, retail stores, offices, etc.

4. Pennsylvania, H-1174, Nov. 11, 1982:

The Comprehensive Clean Indoor Air Act would have prohibited smoking in public places, including restaurants, retail stores, arenas, and offices and other commercial establishments, or at public meetings except in designated smoking areas.

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V. LEGISLATION

5. Vermont, H-474, April 22, 1982:

Would have prohibited smoking in public places, workplaces, elevators and at public meetings except in designated smoking areas. "Public Place" means any enclosed, indoor area greater than 100 square feet or seating or normally accomodating more than 25 persons.

6. West Virginia, SB-81 and SB-126, March 13, 1982:

Would have enacted West Virginia Clean Indoor Air Act, restricting smoking in health facilities, mass transportation, work places and elevators.

7. Wisconsin, S-80 and A-80, April 1, 1982:

Would have enacted Wisconsin Clean Indoor Air Act. Would have restricted smoking on public transportation, in educational and health care facilities, indoor movie theatres, certain offices, elevators, government buildings, retail stores, and restaurants with the capacity to seat more than 50 patrons.

F. Bills - Other Legislative Action

1. New York, S-9234:

Would have prohibited persons from smoking in places of work or any indoor areas open to public, except in designated smoking areas. April 19, 1982: Introduced and referred to Health Committee.

2. Punta Gorda, Florida:

Would have banned smoking in any publicly owned building and certain retail stores, except in designated areas, with exemption for bars and restaurants. March 3, 1982: Proposed ordinance died for lack of a second motion to introduce it.

3. Brunswick, Maine:

Would have banned smoking in municipal building. No action after January 18, 1982, introduction by Town Council.

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## VI. LITIGATION

### A. Private Actions to Prohibit or Restrict Smoking in Private Places of Work

1. Shimp v. N. J. Bell Telephone Co., 368 A 2d 408 (N.J. Sup. Ct. 1976):

In the single case in which a court has found an employee has a right to a smoke-free work environment, a New Jersey court prohibited smoking in all work areas of a company office. Alleging a severe allergic reaction to cigarette smoke, the plaintiff Shimp sued her employer to compel it to provide her a no-smoking work area. This case was not actively defended by N.J. Bell Telephone.

2. Mitchell v. Bell Telephone Co., C-4159-76 (N.J. Sup. Ct. 1978):

This was another case in which the plaintiff, an employee of the defendant and allegedly allergic to tobacco smoke, sought an injunction compelling the defendant to provide him with a smoke-free place of work. The court dismissed the case, in response to the defendant's motion which was based on preemption grounds. Mitchell, which was actively defended, was brought by the same attorney who represented Shimp and the dismissal was entered by the same judge.

3. Gordon v. Raven Systems and Research, Inc., 14092-79 (D.C. Sup. Ct. 1981):

Plaintiff sought reinstatement and damages from her former employer, alleging that she was fired when she insisted that she be provided with a smoke-free environment because of her allergy to tobacco smoke. The court dismissed the case, finding that defendant had no contractual or legal obligation to accede to plaintiff's demands. The court expressly declined to follow Shimp, discussed above, and observed that "neither statute, regulation, nor principles of common law required the Raven Corporation to furnish the plaintiff with the kind of smoke-free workplace she demanded."



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4. Kensell v. State of Oklahoma et al., Civ. No. 81-786-T (W.D. Okla. 1982):

The plaintiff, an employee of the Oklahoma Department of Human Services, filed suit in U.S. District Court against his employer, the State of Oklahoma and numerous state officials and employees, contending, inter alia, that their refusal to provide him with a smoke-free workplace violated his rights under the First, Fifth, Ninth and Fourteenth Amendments. Citing FENSR and Gasper, discussed below, the court dismissed the plaintiff's suit, concluding that "[f]or the Constitution to be read to protect non-smokers from inhaling tobacco smoke would be to broaden the rights of the Constitution to limits heretofore unheard of." Like the court in Gasper, the Kensell court noted that the results sought by the plaintiff might better be accomplished through the legislative process.

5. Vickers v. Veterans Administration, No. (81-85V) (W.D. Wash., August 31, 1982):

A U.S. District Court in Washington State ruled that a federal employee who is hypersensitive to tobacco smoke is "handicapped" within the meaning of the Rehabilitation Act, 29 U.S.C.§794. The court, however, found that the supervisor's reasonable efforts in this case to accomodate the employee's handicap satisfied the Act's requirement that federal agencies not discriminate against handicapped persons. No damages were awarded to the plaintiff.

6. Smith v. Western Electric Company, No. 44286 (Mo. Ct. of Appeals, Sept. 14, 1982):.

The Missouri Court of Appeals held that an employer's common law duty to provide a reasonably safe workplace might include an obligation to ensure a smoke-free environment for employees sensitive to burning tobacco. The court did not base its decision on any statute but rather on the "well-settled" law that employers must protect employees from avoidable perils. Western Electric had contended that the federal Occupational Safety & Health Act preempted any state action on this issue. This decision will allow plaintiff the opportunity to prove his allegation at a trial.



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VI. LITIGATION

7. Parodi v. Merit Systems Protection Board, 80-7671 (9th Cir., Oct. 21, 1982):

The U.S. Court of Appeals for the 9th Circuit ruled a government employee with a hypersensitivity to cigarette smoke must be given a smoke-free office within 60 days or be granted disability payments. While acknowledging that most disability claims involve a physical or mental limitation, the court stated that an "environmental limitation", such as Parodi's hypersensitivity to smoke, may form the basis for an employee's disability.

8. Hentzel v. The Singer Co., (Calif. Ct. of Appeals, Dec. 20, 1982):

The California Court of Appeals found that an employee allegedly fired for insisting on a smoke-free workplace has the right to sue his former employer for damages. The decision, reversing a trial court's dismissal of the Henztel complaint, emphasized the need to protect employees who voiced dissatisfaction with allegedly hazardous working conditions.

B. Private Actions to Prohibit or Restrict Smoking in Public Places

1. Gasper v. Louisiana Stadium and Exposition District 418 F. Supp. 716 (E.D. La. 1976), aff'd, F.2d 897 (5th Cir. 1978), cert. denied, 439 U.S. 1079 (1979):

Plaintiffs sued to compel the authorities who manage the Louisiana Superdome to prohibit smoking in the Superdome during sporting and other public events. In support of this request, the plaintiffs claimed a constitutional right to a smoke-free environment, relying on the First Amendment (freedom of speech), Fifth and Fourth Amendments (due process right to life and liberty) and Ninth Amendment (which protects so-called unspecific but "fundamental" rights). The district court unequivocally rejected each of these claims. The court of appeals affirmed this decision in all respects, while noting that the legislature, as opposed to a court, would have broad power to regulate smoking in public places. The Supreme Court denied the plaintiff's petition for review of the lower courts' decisions.

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## VI. LITIGATION

2. Federal Employees for Non-Smokers Rights (FENSR) v. United States, 446 F. Supp. 181 (D.D.C. 1978), aff'd, 598 F. 2d 310 (D.C. Cir.), cert. denied, 444 U.S. 926 (1979).

Several anti-smoking organizations, whose members included federal employees, sought to compel the federal government to prohibit smoking in federal facilities except in designated smoking areas. Plaintiffs asserted a private right of action under the Occupational Safety and Health Act (OSHA), a deprivation of their First and Fifth Amendments rights (freedom of speech and right to due process) and a common law right to a smoke-free workplace. The district court, relying on the decision in Gasper, rejected the constitutional claims, held that OSHA implies no private cause of action and found that it had no jurisdiction to consider the common law claim advanced by the plaintiffs in support of their demands. The court of appeals affirmed the district court decision and the Supreme Court refused to review the case.

3. Church v. Brown, et. al., Civ. No.78-4073 (S.D. Ill. 1979):

The plaintiff, an employee of Scott Air Force Base, brought this action in U.S. District Court alleging that the commander of the base and the United States had a duty, under both the common law and OSHA, to provide him with a smoke-free working environment. Accepting "wholeheartedly" the analysis of the court in FENSR, the Church court found that it had no jurisdiction to consider the common law claim propounded by the plaintiff and rejected his OSHA claim, finding "that no private implied cause of action exists under OSHA..."

4. GASP v. Mecklenburg County, 256 S.E. 2d 477 (N.C. 1979):

An anti-smoking group sought an injunction forcing county authorities to prohibit smoking in all county public buildings and places of work, relying, like the plaintiffs in FENSR and Gasper, on an alleged constitutional right to a smoke-free environment. The North Carolina Court of Appeals, citing FENSR and Gasper, held that no such constitutional right exists and dismissed the plaintiff's suit.



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## VI. LITIGATION

### C. Other Decisions

1. Stevens v. Employment Security Commission (Iowa, Nov. 1976):

An Iowa state court ruled eligible for unemployment benefits a woman whose health required that she accept a job only in a smoke-and-dust free environment. Suffering from asthma, the plaintiff quit her job because the cigarette smoke in her office allegedly aggravated her illness. Unable to find a job that met the conditions required by her health, she applied for unemployment benefits. The Employment Security Commission said her restrictions on possible employment had made her unavailable for work and ineligible for benefits. But a District Court in Iowa disagreed, saying her limitation was not so great as to to remove any possibility of employment. The court compared her situation to the cases where benefits were granted to persons limited to "light work".

2. Ellen L. Meyer v. C.P. Clare & Co., (Idaho Industrial Comm., Nov. 1978):

Unemployment benefits were also granted to an Idaho worker who had quit because two cigar smokers were transferred into her work area. She could have been given a leave of absence until a suitable position opened, but no one told her of this option. According to the state industrial commission, her limited choice "would compel a reasonable person to leave her employment." Thus she had good cause for quitting and was eligible for benefits.

3. Alexandria Volunteer Fire Dept. v. City of Alexandria, (E.D. VA, Dec. 13, 1982):

A federal district court rejected a lawsuit by Alexandria volunteer firefighters which challenged a regulation requiring volunteer firefighters to meet city fire department standards, including no smoking. No violations of the due process or equal protection clauses were found in the requirement that the volunteers meet the same physical, mental and training standards that the professional firefighters must meet.



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4. San Mateo County Fire Fighters, Local 2400 v. City of San Mateo, No. 268890 (Calif. Sup. Ct. Dec. 16, 1982):

Stating the city may have violated a state law that requires local officials to negotiate working conditions, a superior court temporarily barred the city of San Mateo from enforcing a no-smoking policy for rookie firefighters. Under the court order, the city may continue to require fire department applicants to sign the no-smoking pledge, however, it would be unenforceable unless the temporary injunction is overturned at trial.



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## VII. REVIEW OF SURVEYS OF SMOKING RESTRICTIONS

### 1977

Dartnell Institute of Business Research Target Survey
Nationwide survey of 250 office administrators from the U.S. and Canada. Results indicated the following-

| | |
|---|---|
| Companies with office smoking policies | 30% |
| Companies with anti-smoking campaigns | 11% |
| Companies offering incentives to quit | 3% |

### 1979

National Interagency Council on Smoking and Health Survey
Nationwide survey of top-level management and medical officials in 3000 U.S. companies which revealed that approximately 15% of U.S. businesses have programs to encourage and assist their employees to quit smoking. In addition, one-third of the responding companies indicated an interest in developing or expanding smoking and health programs for their work force.

### 1980

Smoking in the Office: A Burning Issue

Survey conducted by the Administrative Management Society's Committee of 500. Results of 302 respondents. Eight-four percent indicated that their company does not have an official policy regarding the rights of smokers and nonsmokers. Of the 47 (15.6%) of the companies which do have an official policy, 70.2% of these have the policy stated in writing in an employee manual or the like. Among those companies which do have an official policy, only five (10.6%) forbid smoking in all office areas.

Survey of New Jersey Employers

Over 600 questionnaires were mailed to personnel officers of the top 100 New Jersey employers, the members of the occupational nurses association and about 33 employers who had attended the Governor's Conference on Smoking in 1979. Because the survey concentrated on large companies, companies with nurses and companies who had shown interest in the smoking problem, the results are most likely not representative. Furthermore, only 35 questionnaires were returned. That is a 6% response rate. However, while the findings are, no doubt, atypical, they do reveal what the survey was searching for--smoking prevention and cessation programs among New Jersey employers.

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## VII. REVIEW OF SURVEYS OF SMOKING RESTRICTIONS

### Survey of New Jersey Employers (continued)

Twenty-two or 63% of the respondents reported smoking restrictions of some sort. They are:

American Hoechst Corp., N. Somerville
C.R. Bard, Inc., Murray Hill
Becton-Dickinson & Co., Rutherford
Celanese Technical Center, Summit
Dean Equipment Co., Fairfield
DuPont, Linden
Educational Testing Service, Princeton
Exxon Bayway Refinery, Linden
Globe Products Co., Inc., Clifton
Hoffman-LaRoche, Inc., Belvidere
Johns-Manville, Manville
Lehn & Fink Products Co., Belle Mead
Leslie Co., Parsippany
Magnetic Metals Corp., Camden
McWilliams Force Co., Inc., Rockaway
Midland-Ross Corp., New Brunswick
Penick Corp., Lyndhurst
Public Health Service/Div. of Fed. Empl. Health, Newark
Public Health Service/Div. of Fed. Empl. Occ. Health, Belle Mead
Revlon Dist. Center, Edison
Scott Paper Co., Landisville
3-M Co., Freehold

### Smoking Policies and Smoking Cessation Programs of Large Employers in Massachusetts

Survey of 128 large employers. Eighty-four (66 percent) responded. Fifty-four (64 percent) had designated jobs or work areas in which smoking was prohibited usually because of potential danger to products or equipment. Seven (8 percent) of the employers provided counseling, and 10 (12 percent) provided smoking cessation programs for those employees who desired to quit smoking.



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## VIII. REPORTS FROM TI FIELD STAFF

The following information was obtained from State Activities area directors who were asked to survey their states for corporate smoking restriction policies.

### 1. NO SMOKING CONTROLS

#### ALABAMA

Maxwell Air Force Base

#### ARIZONA

Best Western International
The Greyhound Corp.
Mountain Bell
Phelps Dodge Corp.
Ramada Inn
U-Haul International

#### CALIFORNIA

Altec
Baker International
Blue Chip Stamp
Clorox
Crown Zellerbach
Farmers Brothers
First American Financial
First Executive
Foremost-McKesson
General Automation
Hewlett Packard
Kyocera
MCA
MSI Data
Oak Industries
Pennecorp Financial
RB Industries
Republic Corp
Safeway Stores
Science Applications
Signal Co.
Standard Oil
Standard Pacific

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VIII. REPORTS FROM TI FIELD STAFF

1. NO SMOKING CONTROLS (continued)

CALIFORNIA (continued)

Teledyne
Times Mirror
Transamerica
Walt Disney Productions
Whittaker

GEORGIA

Coca Cola
Delta Airlines
Georgia-Pacific Corp.

MASSACHUSETTS

Wang Laboratories

MICHIGAN

Board of Water & Light
Consumers Power
Gerber
K-Mart Corp.
Oldsmobile

NEW HAMPSHIRE

Congoleum Corp.
Wheelabrator

NEW YORK

American Airlines
Ashland Oil
Bankers Trust
Chemical Bank
General Electric
TRW

OHIO

Academy of Nursing Homes
Banc Ohio National Bank
Battelle Memorial Institute
Bob Evans Restaurant
Bonded Oil Co.
Dayton Power & Light

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VIII. REPORTS FROM TI FIELD STAFF

1. NO SMOKING CONTROLS (continued)

OHIO (continued)

E. F. McDonald Corp.
Franklin County
Georgia-Pacific Corp.
O. P. Gallo
Shelby Mutual Co.
State of Ohio
Wendy's International

TEXAS

American General Life Insurance Co. Home Office
American Security Life Insurance Co.
Brittania Manufacturing Co.
Continental Insurance
Data General
Eagle Signal Corp.
E.D.S.
Farah Manufacturing
Firestone Tire and Rubber Co.
Frito-Lay Inc.
General Foods Inc.
Glastron Boat Co.
Home Office
Hunt Wesson Foods
IBM
Land O'Lakes
Lennox Industries Inc.
Motorola
Republic National Life Insurance Co.
Southland Corp.
Tesoro Petroleum
Texaco
Union Oil
U.S. Homes
Wrigley's
York Air Conditioning Div. of Borg Warner

UTAH

Kennecot Minerals Co.



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## VII. REPORTS FROM TI FIELD STAFF

### 2. RESTRICTIONS FOR FIRE AND GENERAL SAFETY

ARIZONA

Chevron, USA

CALIFORNIA

Hewlett Packard
Linkabit Corp.

INDIANA

Chrysler Corp.
Chevrolet Motor Division of General Motors Corp.
Ford Motor Co.
Western Electric

KANSAS

Ford Motor Co.
General Electric

KENTUCKY

Ford Motor Co.
General Electric

MAINE

Bath Iron Works

MASSACHUSETTS

New England Telephone
Western Electric

MISSOURI

Eagle-Picker Ind.

NEW HAMPSHIRE

Digital Corp.



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VIII. REPORTS FROM TI FIELD STAFF

2. RESTRICTIONS FOR FIRE AND GENERAL SAFETY (continued)

LOUISIANA

Ciba-Geigy Corp.
Copolymer Rubber & Chemical Corp.
Dow Chemical
Ethyl Corp.
Monsanto Corp.

NEW JERSEY

Engelhard Industries
International Flavors & Fragrances

TEXAS

Allied Chemical Corp.
Austin White Lime
Exxon Co. USA

VIRGINIA

Allied Corp.
Dupont

WEST VIRGINIA

F.M.C. Corp.
Union Carbide Corp.



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## VIII. REPORTS FROM TI FIELD STAFF

### 3. OTHER RESTRICTIONS

#### CALIFORNIA

Bank of America
Employees not permitted to smoke around customers- only at breaks.

Caesars World
No smoking in front executive offices or at desks.

Conic
Segregated restrooms for smokers and nonsmokers.

Continental Airlines
No smoking for crew members- each department makes its own rules.

Fluor
Segregated cafeteria for smokers and nonsmokers.

General Dynamics
Segregated cafeteria and restrooms for smokers and nonsmokers.

Kennington Ltd.
No smoking around fabrics.

National Education
Each smoker is required to order an air purifier for his/her desk from the purchasing department.

Nucorp Energy
No smoking in reception area.

PSA
Flight crews and counter people are not allowed to smoke; no restrictions on office staff.

San Diego Gas & Electric
No smoking around customers.

Security Pacific
No smoking around customers or in vault; segregated cafeteria for smokers and nonsmokers.

Wells Fargo
Managers make their own rules; segregated cafeteria for smokers and nonsmokers.

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